

STATE OF MONTANA  
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNIT CLARIFICATION NO. 3-89:

WOLF POINT SCHOOL DISTRICT  
NO. 45 AND 45A,

Petitioner,

vs.

WOLF POINT CUSTODIANS'  
ASSOCIATION, MEA, NEA

Respondent,

RECOMMENDED  
ORDER

\* \* \* \* \*

I. INTRODUCTION

On February 24, 1989, the Petitioner filed a request for unit clarification with the Board of Personnel Appeals requesting that Merle Doornek be excluded from the unit defined as custodian and/or maintenance employees excluding custodian substitutes, maintenance substitutes, cooks, bus drivers, school nurses, teachers, teacher aids, secretaries, clerks, licensed professionals and those excluded by Title 39, Chapter 31, MCA.

The petition requested that Mr. Doornek be excluded as a supervisory employee under 39-31-103 (3) MCA.

The petition was served upon Tom Verwolf, President of the Wolf Point Custodians' Association on February 27, 1989.

On March 8, 1989, a Motion to Dismiss was filed by the Association on the grounds the petition did not comply with

1 Board rules.

2 The question has been briefed and with the Petitioner's  
3 submission of April 11, 1989, the matter is submitted.  
4

5 II. DISCUSSION

6 Board of Personnel Appeals rules concerning unit  
7 clarification are found at ARM 24.26.630. The rules provide  
8 that a petition can be filed with the Board only by a  
9 bargaining representative of the unit in question or by a  
10 public employer and only if:

- 11 (a) there is no question concerning representation;  
12 (b) the parties to the agreement are neither engaged in  
13 negotiations nor within 120 days of the expiration  
14 of the agreement;  
15 (c) a petition for clarification has not been filed  
16 with the Board concerning substantially the same  
17 unit within the past twelve months immediately  
18 preceding the filing of the petition; and  
19 (d) no election has been held in substantially the same  
20 unit within the past twelve months immediately  
21 preceding the filing of the petition.  
22

23 From the pleadings and based upon the Board's records it  
24 is apparent that the provisions of Sections (a), (c) and (d)  
25 have been met in that there are no questions concerning  
representation, no unit clarification over the same unit has

1 been filed within the preceding twelve months nor has an  
2 election over the unit in question been held within the  
3 previous twelve months. Moreover the Petitioner has standing  
4 to file the petition. At issue is whether the petition  
5 complies with 24.26.630 (1) (b).

6 The contract in question is "in effect until June 30,  
7 1989" and remains in effect for additional one year periods  
8 unless notice is given by either party in February prior to  
9 the contract expiration date, (Attachment B of Petitioner's  
10 Brief in Opposition to Motion to Dismiss).

11 The petition was filed with the Board on February 24,  
12 1989. A contract that is effective from a certain date  
13 "until" another date is construed as not including the date  
14 named after the word "until" unless there is a specific  
15 provision to the contrary, Hemisphere Steel Products, 131  
16 NLRB 56, 47 LRRM 1595. (Also see ARM 24.26.203 and Rule 6(a)  
17 M.R. Civ. Proc.) Thus, for purposes of time calculation the  
18 petition was filed 126 days prior to contract expiration.  
19 The petition is timely for purposes of the rule. The  
20 remaining question then is whether the parties are "engaged  
21 in negotiations".

22 On February 17, 1989, the Association gave notice to the  
23 district by certified mail of its "desire to negotiate over  
24 the terms of a successor agreement." (See attachments to  
25 Respondent's Brief in Support of Motion to Dismiss.) The

1 request was filed within the time frame established in the  
2 contract. There is no dispute that this occurred nor is  
3 there any dispute that the request had to be made in  
4 February.

5 The parties neither cite nor does it appear that the  
6 Board has defined the phrase "engaged in bargaining" as  
7 applied to filing a unit clarification petition. Relying in  
8 part on 39-31-305(2) MCA and in part on the generally  
9 accepted meaning of the word "engage" as defined in Black's  
10 Law Dictionary the Petitioner contends that the parties have  
11 to have had a meeting and/or exchanged proposals to be  
12 "engaged in bargaining". This argument is not persuasive.

13 39-31-305 (2) MCA deals with bargaining in good faith.  
14 To be "engaged in bargaining" has nothing to do with whether  
15 it is good or bad faith bargaining.

16 The Black's Law definition of engage is "to employ or  
17 involve one's self; to take part in; to embark on". The act  
18 of sending a letter to begin the bargaining process certainly  
19 meets the definition of "to involve one's self; to take part  
20 in" or "embark on". The action of opening the contract is  
21 akin to filing a lawsuit. Just as you are engaged in a  
22 lawsuit when the papers are filed and served so too are you  
23 "engaged in bargaining" when you give written notice you  
24 desire to negotiate. It is the entire process which the  
25 rules refer to, not just the physical act of holding meetings

1 and exchanging proposals.

2  
3 III. RECOMMENDED ORDER

4 The unit clarification petition is dismissed as not  
5 conforming with ARM 24.26.630.(1) (b).

6  
7 Entered and dated this 14th day of April, 1989.

8  
9 BOARD OF PERSONNEL APPEALS

10  
11 By: John Andrew  
12 Hearing Examiner

13 NOTICE: Exceptions to this Recommended Order may be filed  
14 within twenty days of service. If no exceptions are filed  
15 the Recommended Order will become the final order of the  
16 Board Of Personnel Appeals.

17  
18 CERTIFICATE OF MAILING

19 I, Jennifer Jacobson, do hereby certify  
20 that a true and correct copy of this document was mailed to  
21 the following on the 14th day of April, 1989.

22 Emilie Loring  
23 Hilley and Loring  
24 500 Daly Ave.  
25 Missoula, MT 59801

Rick D'Hooge  
Montana School Boards Association  
1 South Montana  
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